



Federal Communications Commission  
Washington, D.C. 20554

EX PARTE OR LATE FILED

FEB 13 1998

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FEB 20 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Robert R. Catalino  
Town of Evans  
8787 Erie Road  
Angola, New York 14006-9600

Dear Mr. Catalino:

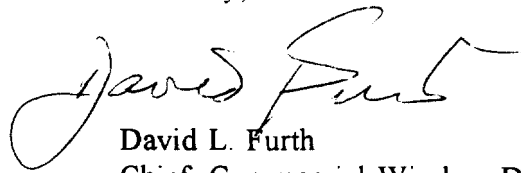
Thank you for your letter dated December 15, 1997, which was forwarded to us from the office of Senator Daniel Patrick Moynihan, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in your community. Your letter refers to three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David Furth". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

David L. Furth  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

Copy to: The Honorable Daniel Patrick Moynihan



Federal Communications Commission  
Washington, D.C. 20554

FEB 13 1998

Vincent J. Cannuscio  
Town of Southampton  
116 Hampton Road  
Southampton, New York 11968

Dear Mr. Cannuscio:

Thank you for your letter dated December 15, 1997, which was forwarded to us from the office of Senator Daniel Patrick Moynihan, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in your community. Your letter refers to three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

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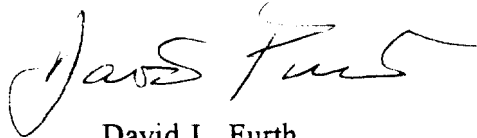
Vincent J. Cannuscio

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Sincerely,

A handwritten signature in black ink, appearing to read "David L. Furth", written in a cursive style.

David L. Furth  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

Copy to: The Honorable Daniel Patrick Moynihan

DANIEL P. MOYNIHAN  
NEW YORK



United States Senate  
WASHINGTON, DC 20510-3201

January 7, 1998

CUB  
9/1/82

410

Congressional Liaison  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Dear Sir or Madam:

I am referring the enclosed inquiries from some of my constituents regarding local zoning of cellular, radio and TV towers to your office.

My constituents would appreciate your careful consideration of these remarks, and your thoughts on what remedies there are for this situation. Please respond directly to them and send a copy to me.

I thank you for your attention to this matter.

Sincerely,

Daniel Patrick Moynihan

Enclosures



Printed on recycled paper



## TOWN OF EVANS

8787 Erie Road • Angola, NY 14006-9600

ROBERT R. CATALINO II, SUPERVISOR

Telephone (716) 549-5787

CAROL A. FRANEY, TOWN CLERK  
Telephone (716) 549-8787

### COUNCILMEN

MARK R. ENGLER.....ANGOLA, NY  
JAMES D. HEIMBURG.....ANGOLA, NY  
JOHN A. LATIMORE.....ANGOLA, NY  
THOMAS A. PARTRIDGE.....ANGOLA, NY

December 15, 1997

Office of the Secretary  
Federal Communications Commission  
Washington D.C. 20554

RE: FCC proposal (Docket No. 97-182), "Preemption of State and Local Zoning and Land Use Restrictions on the Citing, Placement and Construction of Broadcast Station Transmission Facilities."

Dear Sir or Madam:

News of a recent proposal by the Federal Communications Commission (FCC) has reached my desk and has caused the Town much concern. The FCC proposal (Docket No.97-182) is entitled, "Preemption of State and Local Zoning and Land Use Restrictions on the Citing, Placement and Construction of Broadcast Station Transmission Facilities."

The Town is opposed to this legislation. It will reduce our ability to regulate land use within our community and will remove local leverage for negotiating settlements that may allow towers to be sited in areas objectionable to the public.

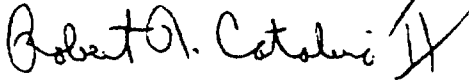
Just recently our Town expended considerable time and dollars to enact a tower law to protect its citizens from adverse visual impacts, preserve and enhance the positive aesthetic qualities of our Town, provide for health, safety and welfare by avoiding potential damage to adjacent properties from tower failure, falling, etc. Our law also requires the joint use of towers when available and encourages the placement of antennas on existing structures to reduce the number of such structures in the future. No new tower may be established if there is a technically suitable space already available.

The proposed rule will limit the time period in which a local government may consider requests for approval of tower facilities. This will result in less time for local governments to consider proposals which replace or modify existing towers. It also would rule out the potential for environmental review as a method of control. Governments would then lose their ability to protect their communities from unwelcome physical intrusions and unsuitable development.

We realize we must accommodate the present need for towers; however, we must not allow the FCC to solve the issues of the broadcasters at the expense of citizens that expect state and local governments to protect their interests. Our Town has just fought successfully, to the benefit of

all, to regain these rights through a new tower law. We respectfully request the FCC to refrain from changing something that is finally working for us. We risk losing our own sense of self-protection!

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Catalino" with a stylized flourish at the end.

Robert R. Catalino, Supervisor

CC: ✓ Senator Daniel P. Moynihan  
Senator Alfonse M. D'Amato  
Congressman William Paxon  
Congressman John J. LaFalce  
Congressman Jack Quinn  
Senator Dale M. Volker  
Assemblman Richard A. Smith  
Richard Tobe, Erie County DEP



## **Town of Southampton**

116 HAMPTON ROAD  
SOUTHAMPTON, NEW YORK 11968

**VINCENT J. CANNUSCIO**  
SUPERVISOR

Phone: 516-283-6055  
Fax: 516-287-5708  
Web Site: [www.town.southampton.ny.us](http://www.town.southampton.ny.us)  
e-mail: [vcannuscio@hamptons.com](mailto:vcannuscio@hamptons.com)

December 15, 1997

The Honorable Alfonse M. D'Amato  
Seven Penn Plaza Room 600  
New York, New York 10001

The Honorable Daniel Patrick Moynihan  
405 Lexington Avenue, 62nd Floor  
New York, New York 19174

The Honorable Michael Forbes  
1500 William Floyd Parkway, Suite 201  
Shirley, NY 11967

The Honorable Rick Lazio  
126 West Main Street  
Babylon, NY 11702

Dear Senators and Congressmen:-----

I am writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.



Cellular Towers -- Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking, the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad. It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

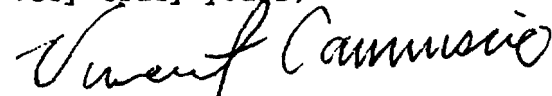
This proposal is astounding when broadcast towers are some of the tallest structures known to man--over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But The Wall Street Journal and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC. First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 730-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

Very truly yours,



Vincent Cannuscio  
Supervisor

cc: See attached list

Copy List

Senator John McCain  
241 SROB  
Washington, DC 20510-0303

Senator Conrad Burns  
187 SDOB  
Washington, DC 20510-2603

Senator Kay Bailey Hutchison  
283 SROB  
Washington, DC 20510-4304

Senator Slade Gorton  
730 SHOB  
Washington, DC 20510-4701

Senator Dianne Feinstein  
331 SHOB  
Washington, DC 20510-0504

Representative Tom Bliley  
2409 RHOB  
Washington, DC 20515-4607

Representative W. J. Tauzin  
2183 RHOB  
Washington, DC 20515-1803

Representative Edward J. Markey  
2133 RHOB  
Washington, DC 20515-2107

Representative John D. Dingell  
2328 RHOB  
Washington, DC 20515-2216

Representative Bob Goodlatte  
123 CHOB  
Washington, DC 20515-4606

Representative James Moran  
1214 LHOB  
Washington, DC 20515-4608

Representative Bart Stupak  
1410 LHOB  
Washington, DC 20515-2201

Representative Joe Barton  
2264 RHOB  
Washington, DC 20515-4306

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Legislative Counsel  
National League of Cities  
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Associate Legislative Director  
National Association of Counties  
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Mr. Kevin McCarty  
Assistant Executive Director  
U.S. Conference of Mayors  
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Washington, DC 20006

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Government Affairs Coordinator  
American Planning Association  
1776 Massachusetts Ave. NW, 4th Floor  
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